

## **REMARKS**

Reconsideration of the application, as amended, is respectfully requested.

Claim 16 was rejected under 35 U.S.C. § 112, second paragraph. Applicant has amended this claim to remove the informality. The revision has support at page 4, line 2.

The specification has been amended as supported at Fig. 1. New claim 17 is supported by the amendment to the specification and original Fig. 1.

Claims 1, 3-10 and 13-16 were rejected under 35 U.S.C. § 103(a) as unpatentable over Ezaki (JP 60230711) in view of a combination of Hui (ed.) (Dairy Science and Technology Handbook) and Martinez et al. (EP 0 864 256 A2). Applicants traverse this rejection.

Claim 1 has been amended to more sharply define the invention. Claim 1 has been amended to incorporate elements of claim 3. Independent claim 13 has been similarly amended.

Ezaki relates to a device for manufacturing frozen block foods. These may be ice candies. Ezaki notes that ice candies tend to attach to the walls of depressions (i.e. mould cavities) of the rollers. See page 4, lines 1-7. As a result of this stickiness to the depressions, Ezaki find it difficult to achieve reliable formation of blocks of ice candies. See page 4, lines 8-9.

Resolution of this problem was achieved through a number of technical changes. One of the technical changes was to heat roller 10 by continuous feed of a heating fluid 21 within a cavity of the roller. See page 6, lines 5-10 and page 10, lines 1-2 and 17. Ezaki notes that if the temperature becomes too low on the roller, it becomes difficult for the product to become separated [from the mould cavity]. See page 10, lines 14-16. By contrast with Ezaki, the present invention cools the rollers rather than heating them. It is the exact opposite of the reference. In essence, Ezaki teaches away from cold rollers fearful that the ice confection could be released only by a heated mould cavity.

Another technical feature which helped overcome the stated problem was to have the two rollers 10, 11 being rotated at a constant speed. See page 6, lines 1-2. By contrast, in the invention of claim 4 applicants utilize a variable rotational speed. The specification indicates that surprisingly, it was noticed that filling of the mould cavities was greatly improved if the roller stops, or at least significantly slows down, while a mould cavity is filled. Higher speed is employed when the filling device is between two mould cavities of a roller. Ezaki teaches just the opposite. See page 6, lines 1-4.

New claim 17 further distinguishes over Ezaki by reciting that the forming surface element following the filling devices is open, in contrast to the arrangement illustrated in Ezaki's Fig. 1.

Martinez et al. was relied upon to disclose that frozen ice confections are prepared within a multi-part or split mould which is pre-cooled to below -50°C with cryogenic liquid. Based on this, the Examiner argues that a cryogenic liquid could be applied to the mould of Ezaki.

The combination of Ezaki and Martinez would not lead to the present invention. Ezaki is quite explicit. Frozen ice candies need a heated roller to be released.

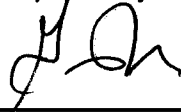
The Examiner in an earlier Office Action admitted that Ezaki was silent with regard to the overrun feature of the frozen confection. Hui was introduced as disclosing ice creams with 65% overrun and desirable properties based on the overrun. Applicants submit that the Hui disclosure provides no motivation for changing the fundamental processes of Ezaki. The primary reference discloses that rollers are heated to allow release of the frozen confection.

For all of the above reasons, a combination of Ezaki in view of Martinez and Hui would not render the instant invention obvious.

Claims 1, 3-10 and 13-16 were provisionally rejected for obviousness-type double patenting over claims 1-4 of co-pending application 11/891,208. Applicant herewith submits a Terminal Disclaimer which is believed to overcome this rejection.

In view of the foregoing amendment and comments, applicant requests the Examiner to reconsider the rejection and now allow the claims.

Respectfully submitted,



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Gerard J. McGowan, Jr.  
Registration No. 29,412  
Attorney for Applicant(s)

GJM/mpk  
(201) 894-2297